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**IN THE
COURT OF APPEALS OF INDIANA**

LINDELL WINN,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0701-CR-100

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William Robinette, Commissioner
Cause No. 49G03-0607-FC-137437

August 17, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Lindell Winn appeals his two convictions for Burglary, as Class C felonies, following a bench trial. He raises a single issue for our review, which we restate as whether the State presented sufficient evidence to sustain his convictions.

We affirm.

FACTS AND PROCEDURAL HISTORY

At 1:28 a.m. on July 26, 2006, the Indianapolis police received a call reporting suspicious activity. The caller reported that a white van with an Arkansas license plate was in the alley in the block formed by Bosart Street, Wallace Avenue, and Michigan Street and that someone was breaking into garages in the alley. Indianapolis Police Officer Kermon was dispatched to the scene.

Officer Lantzer, who heard the report over his radio, also went to the scene and saw an open garage door and, inside the garage, the car's passenger door and hatchback door were open. Lantzer went to the adjacent house to alert the resident. Carl Gulde lived in that house located at 324 Wallace Avenue.

While Lantzer was standing on Gulde's front step, he noticed a white van with an Arkansas license plate traveling by slowly. The van appeared to be having mechanical problems. Because the van matched the description that Lantzer heard over the radio, he returned to his police car and pulled the van over at 1:49 a.m. Lantzer could see lawnmowers and golf clubs in the van.

Lantzer reported his traffic stop of the van over the radio, and Kermon came to assist. Kermon saw Winn “walking briskly from the passenger’s side of the van.” Transcript at 92. Kermon took Winn into custody.

After Gulde talked to Lantzer, Gulde went to his garage and saw that his lawnmower and golf clubs were gone. In the meantime, Ron Thomas, who lived at 325 Bosart Street, woke up and checked his garage. He found that one panel of the garage door had been knocked out and that the side door was open. He also found that his lawnmower, saw, battery charger, mountain bike, and boom box were missing from the garage.

The officers asked Gulde and Thomas to come to Wallace Avenue, where the van had been stopped, to see if they could identify the property found in the van. The officers found the following items in the van: two lawnmowers; a set of golf clubs; a bicycle; a battery charger; a saw; a boom box; a cooler; and a notepad. Gulde identified his lawnmower, golf clubs, and two other items from his garage that he had not realized were missing. Thomas identified his missing items.

The State charged Winn with two counts of burglary and two counts of Theft. The State also charged Winn and Robert Henson, the driver of the van, as co-defendants. Both Winn and Henson waived their right to a jury trial, and the case was submitted to the court for trial on November 2 and December 8, and the court took the matter under advisement. On December 12, the court found both defendants guilty of two counts of burglary and two counts of theft.

On December 28, the court held Winn’s sentencing hearing. It first vacated Winn’s convictions for theft. The court then sentenced Winn to four years for each

burglary conviction and suspended one year from each sentence. It ordered the sentences to be served consecutively for an aggregate term of eight years. This appeal ensued.

DISCUSSION AND DECISION

Winn contends that the State failed to present sufficient evidence to support his burglary convictions. The well-established standard of review to a challenge of the sufficiency of the evidence to support a conviction requires us to “neither reweigh the evidence nor judge the credibility of the witnesses.” Prickett v. State, 856 N.E.2d 1203, 1206 (Ind. 2006). We will affirm if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Id. Specifically, a burglary conviction may rely on circumstantial evidence. Gentry v. State, 835 N.E.2d 569, 573 (Ind. Ct. App. 2005).

The Indiana Code provides, “A person who breaks and enters the building or structure of another person, with intent to commit a felony in it, commits burglary, a Class C felony.” Ind. Code § 35-43-2-1 (2004). The State charged that the felony Winn intended to commit was theft. The crime of theft is defined as the “knowing[] or intentional[] exert[ion of] unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use.” See I.C. § 35-43-4-2(a). Thus, to prove the offenses as charged, the State was required to show beyond a reasonable doubt that Winn broke and entered the garages with the intent to exert unauthorized control of Gulde’s and Thomas’ property with the intent to deprive them of that property’s value or use.

Winn does not claim that a burglary and theft did not occur. “It is undisputed that someone broke into the garages of Carl Gulde and Ron Thomas and took their property.” Appellant’s Brief at 8. Rather, he argues that he was merely present at the scene and that the State did not prove that he constructively possessed the stolen property. We cannot agree.

First, while it is true that mere presence at the crime scene is not a sufficient basis on which to support a conviction, presence at the scene in connection with other circumstances tending to show participation in the crime may raise a reasonable inference of guilt. Brink v. State, 837 N.E.2d 192, 194 (Ind. Ct. App. 2005), trans. denied. Circumstances can include the course of conduct of the defendant before, during, and after the offense. Id. Here, Winn was not merely present. He was in the van in the presence of the stolen property, which was visible to Officer Lantzer through the van’s windshield. And Winn’s conduct—attempting to walk away from the van when it was stopped—is precisely the type of conduct from which the court could infer his participation in the crime.

Next, evidence of constructive possession is sufficient where the State proves that the defendant had both the capability and intent to maintain dominion and control over the contraband. Hardister v. State, 849 N.E.2d 563, 573 (Ind. 2006). Intent may be shown if the State demonstrates the defendant’s knowledge of the presence of contraband. Ables v. State, 848 N.E.2d 293, 297 (Ind. Ct. App. 2006). Where the control of the contraband is nonexclusive, the State must present evidence of additional circumstances pointing to the defendant’s knowledge. Id. Inferred knowledge has been found through a variety of means, including incriminating statements by the defendant,

attempted flight or furtive gestures, proximity of the contraband to the defendant, and location of the contraband within the defendant's plain view. Id.

Here, the police were notified of suspicious activity involving a white van with an Arkansas license and garages broken into at 1:28 a.m. At 1:49 a.m., Officer Lantzer pulled over that van, and Winn was the only passenger. The stolen property—including lawnmowers and golf clubs—was visible from outside the van, so the stolen property was within Winn's plain view while he was in the van. Further, Winn attempted to flee from the scene when the police stopped the van. Those are additional circumstances from which the court could infer his constructive possession of the stolen property.

“[T]he unexplained possession of recently stolen property provides support for an inference of guilt of theft of that property.” Allen v. State, 743 N.E.2d 1222, 1230 (Ind. Ct. App. 2001), trans. denied. Further, a conviction for burglary with the intent to commit theft can be sustained as long as the State presents evidence from which the factfinder can reasonably infer that the defendant intended to commit theft. Gentry, 835 N.E.2d at 573. The court reasonably inferred from the State's evidence that Winn constructively possessed the property stolen from the two garages, which were broken into, and that Winn broke and entered the garages to commit theft. Thus, the evidence sufficiently supports Winn's convictions for burglary with the intent to commit theft.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.